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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER, JUDGE

UNITED STATES OF AMERICA,

Plaintiff,

VS.

STEVEN BROWN,

Defendant.

**No. 18-cr-0081-CRB**

San Francisco, California

Wednesday, March 4, 2020

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

For Plaintiff:

DAVID L. ANDERSON

UNITED STATES ATTORNEY

150 Almaden Boulevard, Suite 900

San Jose, California 95113

**BY: CHINHAYI COLEMAN CADET**

**ASSISTANT UNITED STATES ATTORNEY**

For Defendant:

LAW OFFICES OF DOUGLAS RAPPAPORT

260 California Street, Suite 1002

San Francisco, California 94111

**BY: DOUGLAS L. RAPPAPORT, ESQ.**

Also Present:

Joseph L. Schatz, Esq.

3121A Franklin Street

San Francisco, California 94123

Reported by:

Katherine Powell Sullivan, CSR #5812, CRR, RMR  
Official Reporter - U.S. District Court

Wednesday - March 4, 2020

1:49 p.m.

P R O C E E D I N G S

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**THE CLERK:** Calling Criminal 18-0081, USA versus Steven Brown.

**MS. CADET:** Good afternoon, Your Honor. Chinchay Cadet for the United States.

**MR. RAPPAPORT:** Good afternoon, Your Honor. Douglas Rappaport on behalf of Mr. Brown. He is present out custody.

**MR. SCHATZ:** Good afternoon, Your Honor. Joseph Schatz for Mr. Brown's victim, Terry Kleid.

**THE COURT:** Okay. So where are we on this matter?

**MR. SCHATZ:** Your Honor --

**THE COURT:** You have to speak into the microphone.

**MR. SCHATZ:** Your Honor, I sent the letter to the Probation department, asking the Court to give my client the opportunity to conduct discovery after the stay in the civil action is lifted, because although the Court has afforded me the opportunity to show why she should be afforded restitution, I can't do that as long as the stay is in effect.

I've asked the civil attorney for Mr. Brown to lift it. He has refused, still, on grounds of his Fifth Amendment rights.

So I think that the fairest thing to do, since the Court is affording me this opportunity but Mr. Brown himself is

01:50:28 preventing me from taking advantage of it, is to allow her to  
2 come back to the Court within a reasonable time after the stay  
3 has been lifted, to present the evidence that would show that  
4 she's deserving of restitution.

5 **THE COURT:** Who has -- where is the stay at the  
6 present time? What has been stayed?

7 **MR. RAPPAPORT:** My understanding is that Mr. Schatz  
8 represents a woman by the name of Terry Kleid.

9 **THE COURT:** Right.

10 **MR. RAPPAPORT:** That he is alleging that she is a  
11 victim of Mr. Brown's fraud in this particular case. Both the  
12 Government and I, who have the ability to review the discovery,  
13 do not believe that Ms. Kleid is a victim in this matter.

14 Mr. Schatz has said in a letter to this Court that he is  
15 unable to ascertain whether she is a victim of Mr. Brown  
16 because he has been unable to conduct discovery in the state  
17 court proceeding.

18 Apparently, Mr. Schatz sued Mr. Brown as well as five  
19 other defendants -- he can correct me; it may be four  
20 defendants -- in state court. Mr. Brown, based on his Fifth  
21 Amendment privilege, his attorneys sought a stay of the civil  
22 proceeding but allowed the other defendants to proceed in the  
23 case.

24 It's simply Mr. Brown who has a Fifth Amendment right.  
25 And his right -- while I'm not his civil counsel, Mr. Brown's

01:51:48 Fifth Amendment right extends through the period through which  
2 he could file a notice of appeal. I don't know if that has  
3 run, and we're very close to that date.

4 Suffice to say that Mr. Schatz's letter did not provide  
5 the whole entire picture to this Court and was, to a certain  
6 degree, dishonest by omission.

7 We have a letter dated February 24th, 2020, that was  
8 provided to this Court through the Government. It was  
9 addressed to me. And it indicates that Mr. Schatz, indeed, has  
10 had the opportunity to conduct discovery and, in fact, has  
11 settled with the other defendants in the case.

12 Mr. Schatz also hired a forensic accountant to go through  
13 the records which were provided to him by the individual who  
14 purchased Mr. Brown's business. So Mr. Schatz does have those  
15 records.

16 What this is, is really just a very clever attorney -- and  
17 I have to take my hat off to him -- in an attempt to collect as  
18 much as possible from Mr. Brown for his client. He has a civil  
19 case pending, and he would like to basically take a second bite  
20 at the apple here should he not prove successful in the civil  
21 proceeding.

22 I would ask the Government here for their input as well.

23 **THE COURT:** Yes, Ms. Cadet.

24 **MS. CADET:** Your Honor, this particular defendant has  
25 been adjudged guilty. He's been sentenced, and this is the

01:53:13 only issue remaining.

2 The Government and the defense agree that with respect to  
3 what was charged in this case, that Ms. Kleid is not a victim  
4 of the scheme to defraud HOAs in this case. And the parties  
5 had also agreed that the allegations regarding Ms. Kleid were  
6 not relevant conduct for the sentencing in this case.

7 And, indeed, we received information indicating that  
8 Ms. Kleid has sued Mr. Brown in state court, regarding her  
9 business dealings with Mr. Brown in state court.

10 And so the Government does not believe that there's any  
11 reason to continue this criminal case, that this criminal case  
12 should be resolved.

13 **THE COURT:** Well, it seems to the Court that this is  
14 not a case in which there is a victim out there who everybody  
15 identifies as a victim. But we don't know what the amount of  
16 the loss is that would warrant restitution.

17 Here I understand the argument is she's not a victim. And  
18 the Government says it and defense says it. And, also, a  
19 defendant has a right to be -- to have restitution ascertained  
20 and set in a reasonable period of time. I mean, there are time  
21 limits and so forth about it.

22 So I continued it because I had hoped that to the extent  
23 that there was an argument that this person is a victim and  
24 here is the amount and so forth, or that here is the person  
25 who's a victim, I thought that that would be presented. But I

01:55:03 understand it's not. Not through counsel's fault but because  
2 it's simply arguably not available. At least there's that  
3 argument that it's not available. I don't know. No need to  
4 assign fault.

5 I think the real question is, in a case in which somebody  
6 has not been identified as a victim, that the parties to the  
7 criminal disposition, both the United States Attorney and the  
8 defense maintain this person is not a victim, will I look  
9 beyond that to make some determination that, indeed, this  
10 person is a victim and entitled to restitution.

11 And I would say if, in fact, there was evidence that the  
12 person is a victim but we just don't know how much, that would  
13 be a grounds for, perhaps, some other disposition.

14 But I don't see any basis for making that finding in light  
15 of the fact that both the Government and the defense say she is  
16 not a victim and that the Court sentenced the defendant based  
17 upon an assumption that that conduct didn't constitute relevant  
18 conduct.

19 That's right; didn't I? Or did I? What did I do?

20 **MS. CADET:** I don't recall, Your Honor. I remember  
21 that both the defense and the Government argued that it was not  
22 relevant conduct.

23 **THE COURT:** What did I do?

24 **MR. SCHATZ:** Your Honor --

25 **THE COURT:** Let me find out first. What did I do? I

01:56:33 have no recollection.

2 MR. RAPPAPORT: Excuse me.

3 MR. SCHATZ: I can explain that, Your Honor.

4 MR. RAPPAPORT: Excuse me. You're not a litigant  
5 here, sir.

6 What the Court did was, you said, "I have a solution. I  
7 am going to sentence Mr. Brown based on the facts before me" --

8 THE COURT: Right.

9 MR. RAPPAPORT: -- "in the Presentence Report.  
10 However, I may include this amount as restitution," and gave  
11 Mr. Schatz an opportunity to show the Court --

12 THE COURT: Did I sentence him?

13 MR. RAPPAPORT: You did.

14 THE COURT: Yeah.

15 MR. RAPPAPORT: Yes, he's a sentenced defendant.

16 THE COURT: Right. So all I have to do is ascertain  
17 the restitution. And I'm -- based upon the representations  
18 made and the present status and the fact that I think  
19 restitution as to this victim, if warranted, would unduly delay  
20 the imposition of restitution. And there are other victims,  
21 are there not?

22 MR. RAPPAPORT: There were.

23 MS. CADET: Yes, Your Honor.

24 THE COURT: And so they are entitled to restitution  
25 where it's clear that they should get it.

01:57:30 So I'm denying your request to delay the proceedings, and  
2 I'm denying your request to include her losses, whatever they  
3 may be, in the restitution figure.

4 And I will set restitution based upon -- do we have an  
5 exact amount in victims and so forth?

6 **MR. RAPPAPORT:** The Court has already ordered it  
7 specifically at the time of sentencing.

8 **THE COURT:** That will be the order of restitution.

9 **MR. RAPPAPORT:** Thank you.

10 **THE COURT:** Thank you.

11 **MR. SCHATZ:** Thank you, Your Honor.

12 **THE COURT:** Thank you.

13 **MS. CADET:** Thank you, Your Honor.

14 (At 1:57 p.m. the proceedings were adjourned.)

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17 **CERTIFICATE OF REPORTER**

18 I certify that the foregoing is a correct transcript  
19 from the record of proceedings in the above-entitled matter.

20 DATE: Saturday, January 30, 2021

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24 Katherine Powell Sullivan, CSR #5812, RMR, CRR  
25 U.S. Court Reporter